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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,298	10/14/2003	David C. Fogg	70163-9157-00	9825

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Milwaukee, WI 53202-4108

EXAMINER
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TRETTEL, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/685,298

Applicant(s)

FOGG, DAVID C.

Examiner

Michael Trettel

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 04/29/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 13, 15-18, 2023, 24, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kohnle (6,052,851). Kohnle shows a foam mattress assembly that comprises a convoluted base layer 12 combined with an upper base layer formed by an abrasion resistant layer 14, a conforming layer 16, and an upper abrasion resistant layer 18. The layers 14 and 18 act as a separating cover for the conforming layer 16, and are made from relatively thin layers of nylon foam (column 3, line 67). The conforming layer 16 is made from viscoelastic foam (column 4, lines 3 to 5), and comprises four separate and adjacent strips 20a-20d of differing densities (column 4, lines 9-27). The strips have a common width that is the same as the underlying foam core 12, and have a total length that is the same as the core. Note that as regards claim 9 the lateral dimension of each strip can be considered to be the length.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 to 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skinner (5,081,728). Skinner shows a foam mattress assembly made from a series of parallel spaced laterally extending foam blocks 12 that are enclosed within a cover 14 and supported upon a pedestal or base 40. The foam blocks can be made with differing widths and/or densities (column 3, lines 33 to 44 and column 4, lines 1 to 11) in order to create a customized supporting surface. The cover is made to separate each foam block from one another and includes an extending edge portion 29 that can be used to attach the cover to the underlying pedestal 40 by a fastener strip 42. Note the side pleats 16 of the cover that extend downwardly into the gap between adjacent blocks 12. Note also the embodiment shown in Figure 1a in which all of the foam blocks have the same size. The mattress assembly is shown as being attached to and supported upon an unspecified bedframe construction 40, which appears to form a pedestal. Note that a suggestion is made to use differing types of bed frames and supports as a means for supporting the mattress assembly (column 6, lines 25 to 38). Since it is well known in the art to use a foam block as a boxspring or support for a mattress, the examiner submits that it would have been obvious to the skilled artisan to have used a foam block type boxspring as the bedframe 40 for the Skinner mattress assembly. These kinds of boxsprings are commonly made from a stiff high density foam material with an upholstered covering. In addition the use of various types of foam such as viscoelastic materials, and the use of particular chosen dimensions for the blocks 12 of the Skinner mattress would have been within the ordinary level of skill in the art and therefore would have been obvious to the skilled artisan.

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*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barman et al, Delfs et al, Larson, Thomas, and Parvin show topper pads for use upon a mattress which are of interest. Swanson, Landvik et al, and Schwartz show foam mattresses that are of general interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Michael Trettel  
Primary Examiner  
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